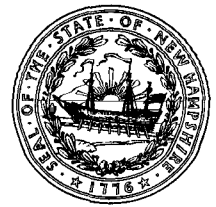




The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

Marc E. Gagnon and  
Ice Castle Water Company, LLC  
Route 10  
93 Jolly Roger Road  
Lempster, NH 03605

**ADMINISTRATIVE ORDER**  
**No. WD 06-018**

April 21, 2006

Re: Wetlands Bureau File # 2005-2848

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to Marc E. Gagnon and Ice Castle Water Co., LLC, pursuant to RSA 482-A:6 and RSA 485-A:22. This Administrative Order is effective immediately upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 29 Hazen Drive, Concord, New Hampshire.
2. Marc E. Gagnon, (a.k.a. Marco Gagnon) is an individual with a mailing address of Route 10, 93 Jolly Roger Road, Lempster, NH 03605.
3. Ice Castle Water Co., LLC is a New Hampshire limited liability company having a mailing address of Route 10, 93 Jolly Roger Road, Lempster, NH 03605. The State of New Hampshire Secretary of State Corporate Division lists Marc E. Gagnon as the Registered Agent and Marco Gagnon as the President and Manager of Ice Castle Water Co., LLC.

**C. STATEMENT OF FACTS AND LAW**

1. Pursuant to RSA 482-A the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 et seq. to implement this program.
2. RSA 482-A:3, I, states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."

3. RSA 482-A:14, III, provides that “[f]ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A.”
4. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a Site Specific permit program. Pursuant to RSA 485-A:6, VIII, DES has adopted NH Administrative Rules Env-Ws 415 to implement this program.
5. Env-Ws 415.02(y) defines significantly altering the characteristics of the terrain to include disturbing more than 100,000 square feet of contiguous area.
6. RSA 485-A:17 requires any person who proposes to significantly alter the terrain to obtain a permit from DES prior to initiating the work.
7. Env-Ws 415.09(i) and (k) require employment of temporary and permanent methods for preventing soil erosion and controlling runoff.
8. Env-Ws 415.09(j) requires construction phasing and sequencing, including methods for limiting the length of time of exposure of unstabilized soils.
9. Ice Castle Water Co., LLC is believed to be the owner of record of property located at 93 Jolly Roger Road, Route 10, Lempster, more particularly referenced on Lempster Tax Map 13 as Lot 536.144 (the “Property”). The State of New Hampshire Secretary of State Corporate Division lists Marc E. Gagnon as the Registered Agent and Marco Gagnon as the President and Manager of Ice Castle Water Co., LLC.
10. A review of the Sullivan County Registry of Deeds records (Book 1366, Page 919) indicates that on May 1, 2003, the Property was created from a subdivision of a larger tract of land, hereinafter referenced as the “Original Property.”
11. The Original Property was apparently owned by Marc E. Gagnon and Roger Gagnon. It appears to have been transferred to International Wildlife, LLC, and the Property was subsequently transferred to Ice Castle Water Co., LLC at the time the land was subdivided. The New Hampshire Secretary of State’s Office Corporate Division records list Marco Gagnon as the President, Manager and Registered Agent of International Wildlife, LLC.
12. On November 29, 2005, DES personnel conducted an inspection of the Property. During the inspection the following was observed:
  - a) A minimum of 90,000 square feet of wetland had been dredged and filled for the construction of a pond and surrounding berm on the Property. Approximately 45,000 square feet had been dredged for the construction of the pond and 45,000 square feet had been filled for the construction of the berm;
  - b) Approximately 420 linear feet of a stream channel had been dredged and filled to

construct the pond and surrounding berm. Approximately 340 linear feet of stream channel had been dredged for the construction of the pond and 80 linear feet filled for the construction of the berm;

c) Approximately 110 additional linear feet of a tributary stream channel had been dredged and filled to construct the pond and berm;

d) A stilling basin and outlet ditch had been constructed in a stream channel, dredging approximately 80 linear feet of additional stream channel as it outlets from the pond;

e) Soils in the ditch were not stabilized and were eroding into surface water;

f) Dewatering of silty water into a wetland and stream was occurring;

g) Approximately 1,000 square feet of wetland had been dredged and filled to construct a manmade channel for dewatering activities;

h) A driveway had been constructed in a wetland, filling approximately 14,000 square feet of jurisdictional wetland;

i) The area inside of an existing circular driveway had been excavated and the dredge spoils stockpiled, dredging and filling approximately 20,000 square feet of jurisdictional wetland;

j) Approximately 8,000 square feet of wetland surrounding the stilling basin and pond berm had been grubbed and graded and dredge spoils had been spread in this area;

k) Large scale soil excavation and alteration of terrain in excess of 100,000 square feet had taken place on the Property.

13. Review of DES records indicates that the Original Property has previously been the subject multiple actions by the DES Site Specific program as follows:

a) On June 4, 1996 the DES Wastewater Engineering Bureau issued a Letter of Deficiency, WSPCD WEB 96-07, to Roger Gagnon for violations of RSA 485-A:17 for construction of a race track resulting in soil disturbance greater than 100,000 square feet without the required Site Specific permit on the Original Property. Roger Gagnon is the father of Marc E. Gagnon.

b) On November 25, 1996 DES issued a Site Specific permit # WPS-4723 to Roger Gagnon and "Mark" E. Gagnon for 755,500 square feet of disturbance to construct Jolly Roger Moto-Sports consisting of a race track, access roads and parking areas on the Original Property.

c) On November 25, 1997, DES issued an Administrative Order WD 97-60 to "Mark" E. Gagnon for knowingly violating RSA 485-A:17, I and NH Admin. Rules Env-Ws 415.03 for disturbing an area over 100,000 square feet without first obtaining a permit and

violating NH Admin. Rules Env-Ws 430.13 by causing an increase in the turbidity of a surface water of the State on the Original Property.

d) On February 28, 1998, DES received a Site Specific application (File # 980302-01) for 510,000 square feet of disturbance to construct an additional access road and parking lot for Jolly Roger Moto-Sports Park on the Original Property. This permit application was never approved.

e) On November 12, 1999, DES received a Site Specific Permit application (File # 991112-02) from International Wildlife, LLC, to construct a recreation pond on the Original Property. This permit application was never approved.

f) On January 5, 2000, DES personnel conducted a site inspection and observed that many of the areas applied for in the 1998 Site Specific application (File # 980302-01) had been constructed without approval from DES.

14. Review of DES records indicates that the Original Property has previously been the subject multiple actions by the DES Wetlands Bureau as follows:

a) On October 3, 1997, the DES Wetlands Bureau received an application (Wetlands File # 1997-1767) from "Mark" Gagnon c/o International Wildlife, LLC to construct a 4.7 acre pond on the Original Property.

b) On May 5, 1998, DES issued a Letter of Deficiency WET 98-27 to International Wildlife LLC, "Mark" Gagnon for violations of RSA 482-A:3, I for two stream crossings and 1400 linear feet of fill in and adjacent to a stream on the Original Property (Wetlands File # 1997-1767).

c) On May 14, 1998 DES issued a Notice of Proposed Administrative Fine AF 98-25 pursuant to RSA 482-A:3, I. This fine was paid by Jolly Roger Moto-Sports, Inc., on March 15, 1999. The authorized signature was "M. E. Gagnon."

d) On September 30, 1998, DES received an after-the-fact Standard Dredge and Fill application from International Wildlife, LLC, to retain 2 stream crossings and construct an additional 2 stream crossings to expand the motocross track and on November 5, 1998 DES granted after-the-fact approval (Wetlands File # 1997-1767) for 4 stream crossings to expand the motocross track on the Original Property.

e) On October 3, 2000, DES issued Wetlands and Non-Site Specific Permit #1997-1767 to dredge and fill approximately 130,100 square feet to construct a 4.7 acre pond in upland and wetland and an access road around the pond. The permit was contingent on specific conditions including, but not limited to, construction of the pond in accordance with the approved plans, obtaining all other required DES Dam Bureau and Site Specific permits, submission of final stream diversion and erosion control plans for review and approval prior to starting construction, and completion and execution of a proposed

conservation easement approved as mitigation. These contingencies were not met and this permit expired on **March 31, 2003**.

15. DES records indicate that on November 17, 1999 the DES Dam Safety Bureau received an application from International Wildlife, LLC, to construct a dam as part of the recreation pond. On October 9, 2000, DES Dam Safety Bureau issued a letter requesting more information to "Mark" E. Gagnon, International Wildlife, LLC, specifying that the dam could not be constructed without a permit. A Dam Safety permit was never issued for this work.

16. Review of aerial photographs taken in 2004 indicates that the pond approved under Wetlands Permit #1997-1767 had not been constructed at that time. The aerials show that a circular driveway to access a new building on the Property had been constructed and the center excavated, impacting approximately 34,000 square feet of wetland. A Wetlands Bureau permit was not issued for the construction of the driveway.

17. DES records indicate that no valid permits exist for any activities regulated under RSA 482-A or RSA 485-A:17 for the impacts observed during the November 29, 2005 DES site inspection of the Property.

#### **D. DETERMINATION OF VIOLATIONS**

1. Marc E. Gagnon and Ice Castle Water Co., LLC, have violated RSA 482-A:3, I, by dredging a minimum of 45,000 square feet of wetlands to construct a pond without obtaining a permit from DES.

2. Marc E. Gagnon and Ice Castle Water Co., LLC, have violated RSA 482-A:3, I, by filling a minimum of 45,000 square feet of wetlands to construct a berm surrounding the pond without obtaining a permit from DES.

3. Marc E. Gagnon and Ice Castle Water Co., LLC, have violated RSA 482-A:3, I, by dredging a minimum of 340 linear feet of a perennial stream channel to construct a pond without obtaining a permit from DES.

4. Marc E. Gagnon and Ice Castle Water Co., LLC, have violated RSA 482-A:3, I, by filling a minimum of 80 linear feet of a perennial stream channel to construct a berm surrounding the pond without obtaining a permit from DES.

5. Marc E. Gagnon and Ice Castle Water Co., LLC, have violated RSA 482-A:3, I, by dredging and filling a minimum of 110 linear feet of a tributary stream channel to construct a pond and surrounding berm without obtaining a permit from DES.

6. Marc E. Gagnon and Ice Castle Water Co., LLC, have violated RSA 482-A:3, I, by dredging a minimum of 80 linear feet of stream channel to construct stilling basin and overflow ditch without obtaining a permit from DES.

7. Marc E. Gagnon and Ice Castle Water Co., LLC, have violated RSA 482-A:3, I, by dredging and filling a minimum of 8,000 square feet of a wetland adjacent to the pond berm without obtaining a permit from DES.

8. Marc E. Gagnon and Ice Castle Water Co., LLC, have violated RSA 482-A:3, I, by filling a minimum of 14,000 square feet of a wetland to construct a driveway without obtaining a permit from DES.

9. Marc E. Gagnon and Ice Castle Water Co., LLC, have violated RSA 482-A:3, I, by dredging and filling a minimum of 20,000 square feet of a wetland adjacent to the driveway without obtaining a permit from DES.

10. Marc E. Gagnon and Ice Castle Water Co., LLC, have violated RSA 482-A:3, I, by dredging and filling a minimum of 1,000 square feet of a wetland to construct a manmade dewatering channel in a wetland adjacent to the driveway without obtaining a permit from DES.

11. Marc E. Gagnon and Ice Castle Water Co., LLC, have violated RSA 485-A:17 by failing to obtain a permit from DES prior to initiating alteration of terrain activities in excess of 100,000 square feet on the Property.

12. Marc E. Gagnon and Ice Castle Water Co., LLC, have violated RSA 485-A:17 and Env-Ws 415.09(i) by failing to install erosion control measures before dewatering on the Property.

#### **E. ORDER**

Based on the above findings, DES hereby orders Marc E. Gagnon and Ice Castle Water Co., LLC, as follows:

1. **Immediately cease and desist** all activities on the Property, except as necessary to stabilize the Property pursuant to this Order.
2. **Within 60 days of the date of this Order**, submit to DES for approval a restoration plan for wetlands located on the Property. The restoration plan shall be prepared by a certified wetland scientist and stamped by a licensed surveyor, and include the following:
  - a) Existing conditions and land topography, with dimensions drawn to scale, including the delineated footprint of all wetlands, streams, ponds, and jurisdictional runoffs on the Property. Prepare delineation in accordance with Section F of the *Army Corps of Engineers Wetlands Delineation Manual* ("Section F");
  - b) The delineated footprint of all disturbed areas in accordance with Section F;
  - c) The area, in square feet, of disturbance on the Property;
  - d) A plan for reestablishing the wetland to its original footprint along with proposed conditions after reestablishing the jurisdictional areas;
  - e) A detailed proposed means of sediment and erosion control (silt fences, haybales, mattings, etc.);
  - f) A proposed schedule, restoration, and construction sequence listing equipment and

- methods for accomplishing restoration as well as an anticipated restoration compliance date;
- g) A detailed proposed planting plan for the reestablishment, stabilization, and revegetation of the restoration areas; and
  - h) A monitoring and reporting schedule including an initial report to DES and once the restoration plan is completed at least one restoration progress assessment report every year for the first four full growing seasons documenting at least 75% survival of all vegetation planted during the restoration project.
3. Retain a certified wetland scientist to supervise the implementation of the restoration and to submit the restoration progress reports prepared in accordance with Item E.2 above.
4. Implement the restoration plan proposed in accordance with Item E.2, above, only after receiving written approval, and as conditioned, by DES.
5. **Within 60 days of the date of this Order**, submit to DES an application for a Site Specific permit for the Property. The application shall be prepared by an engineer licensed in the State of New Hampshire, in accordance with Env-Ws 415.05.
6. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Dawn Buker, Compliance Specialist  
DES Water Division  
P.O. Box 95  
Concord, NH 03302-0095  
Fax: (603) 271-4066  
e-mail: [dbuker@des.state.nh.us](mailto:dbuker@des.state.nh.us)

#### F. APPEAL

Any person aggrieved by determinations D.1 through D.10 of this Order may request DES to reconsider this determination within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

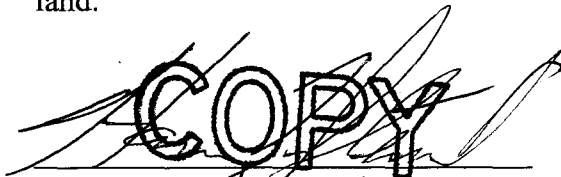
Any person aggrieved by determinations D.11 and/or D.12 of this Order may appeal to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.

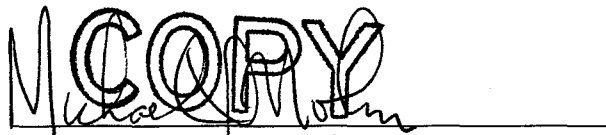
Filing an appeal or request for reconsideration of the Order will not automatically relieve Marc E. Gagnon or Ice Castle Water Co., LLC, of their obligation to comply with the Order.

**G. OTHER PROVISIONS**

Please note that RSA 485-A:22 and RSA 482-A:13 and 482-A:14 provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Marc E. Gagnon and Ice Castle Water Co., LLC, remain obligated to comply with all applicable requirements. DES will continue to monitor Marc E. Gagnon and Ice Castle Water Co., LLC, for compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Sullivan County Registry of Deeds so as to run with the land.

  
Harry T. Stewart, P.E., Director  
Water Division

  
Michael P. Nolin, Commissioner  
Department of Environmental Services

CERTIFIED MAIL # 7005 0390 0001 8452 0244

ec: James P. Martin, Public Information Officer, DES  
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB  
Dawn Buker, DES Wetlands Bureau  
Tracey Boisvert, DES Wetlands Bureau.  
cc: Gretchen R. Hamel, Legal Unit Administrator  
Town of Lempster Board of Selectmen  
Town of Lempster Conservation Commission